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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff herein complains of defendants herein, and alleges as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction over this matter and these defendants pursuant to 28 USC § 1331 for violations of the Americans with Disabilities Act of 1990 (42 USC §12101 et seq.). Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same facts, action is also brought under California law, including, but not limited to, violations of California Government Code §4450; California Health and Safety Code §19953 et seq., and applicable regulations, including but not limited to California Code of Regulations, Title 24,

§19959; and California Civil Code §§ 51, 51.5, 52(a), 52.1, 54, 54.1, and 54.3. Defendants Ali Ahmed Alammari and Yahya Ahmed Alammari owns and operates a business called “Hand’s Liquor” at 662 23rd Street, Richmond, California in this judicial district. Defendant Ali Ahmed Alammari owns the real property on which this business is operated in this judicial district.

2. Venue is proper in this court pursuant to 28 USC §1331(b) and is founded on the fact that the real property that is the subject of this action is located in this district, and that plaintiff's cause of action arose in this district.

INTRODUCTION

3. Hand's Liquor (the "Business") is located at 662 23rd Street, Richmond, California. Said business is owned and operated by defendants Ali Ahmed Alammari and Yahya Ahmed Alammari. The real property is owned by Ali Ahmed Alammari. The Business is a "public accommodation and business establishment" subject to California Health and Safety Code §19953 et seq. and California Civil Code §54 et seq. On information and belief, this Business has, since July 1, 1970, undergone construction and/or "alterations, structural repairs, or additions," subjecting such facility to disabled access requirements per Health and Safety Code §19953 to 19959 et seq. Construction and alterations since July 1, 1982 also subjected these facilities to the requirements of California's Title 24, the State Building Code. Further, irrespective of alteration history, such premises are subject to the "readily achievable" barrier removal requirements of Title III of the Americans with Disabilities Act of 1990.
 4. Defendants Ali Ahmed Alammari and Yahya Ahmed Alammari operate the Business, an establishment for services to the public at which business and location said defendants failed to provide barrier-free access to said establishment as required under federal and California state law. Further, defendant failed to provide compliance with the law as follows:
 - a. Exterior: The primary Business entrance door is without the proper posted international symbol of Accessibility in violation of California Title 24 ("CBC") §11B-216.6 and "ADAAG" (Americans with Disabilities Act Accessibilities Guidelines of the United States Access Board) §4.30.7*(1) (Fig. 43(a), and 4.30.6). As a result, Plaintiff had difficulty in finding and using an accessible entrance.

- 1 b. Interior: The aisles inside the Business were too narrow and caused difficulty to move
2 about, turn at the end of aisles, and shop. The aisles were less than 36 inches wide, and
3 also less than 44 inches wide when serving both sides, and less than 48 inches at the
4 turns, in violation of CBC 11B-403.5.1 and 11B-403.5.2, and ADAAG 4.2 and 4.3.
5 This made it more difficult and laborious for plaintiff to move about and shop, as he
6 had to be careful to avoid bumping into displayed products and knocking them to the
7 floor. Also, he observed the employees of the Business watching him with concern as
8 he moved in the narrow aisles. This made him feel embarrassed.
- 9 c. Interior: The service countertop for sales is not accessible for wheelchair occupants in
10 the Business (greater than 38 inches), in violation of California Title 24 §11B-904.4.1
11 and AGAAG 7.2. As a result, Plaintiff was unable to access the sales area as required
12 by law. This made it difficult for plaintiff to give the money and receive the products
13 purchased. Other patrons could see plaintiff struggling to deal with the non-compliant
14 counter. This caused him embarrassment.
- 15 d. Exterior: The designated parking space was not properly laid out in violation of CBC
16 §11B-208 (the paint had faded and was the wrong color), 11B-247.1.2.5 (disabled
17 person required to cross hazardous vehicular areas), 11B-705.1.2.5 (lack of detectable
18 warnings at hazardous vehicle areas), 11B-502.2 (improper vehicle space dimensions
19 for the space), 11B-502.3 (lack of correctly laid out access aisle, and the words “no
20 parking” were not present), 11B-502.6.4 (surface identification incorrect), 11B-502.6
21 (signage was incomplete, including missing the “\$250” advisement), and 11B-502.4
22 (the ground surface was not level). Also, the wheelchair symbol was extremely faded,
23 and there was no blue border around the space or the access aisle. This caused plaintiff
24 difficulties in finding a safe place to park, safely exit his vehicle, and reach the service
25 area and entrance safely due to cross traffic through the transit area and cars parking in
26 a position to block the transit zone from parking space to front door. These conditions
27 also violated the Americans With Disabilities Act (“ADA”), ADAAG §4.6.3 (the
28 improper parking space dimensions) and §4.6.6 (the lack of passenger loading zones),
 and §4.1.2(1), 4.3.2(1), and 4.14.1 (lack of an accessible route from parking space to
 entrance to facility and entrance to restroom). This made it difficult to find and use a
 safe parking space. The parking area was dangerous for plaintiff as there was no

1 clearly designated space, and other traffic was not on notice that a disabled person in a
2 wheelchair was transiting the area. This caused plaintiff legitimate concern for his own
3 safety as he got out of his vehicle and entered the store. Because of the lack of a proper
4 access aisles, plaintiff was concerned that another vehicle could pull in and try to park
5 there without realizing that a disabled person was in the process of entering or exiting
6 his vehicle.

- 7
- 8 5. The above barriers interfered with Plaintiff's access to the facilities at the Business, and
9 continue to deter plaintiff from visiting said facilities, and as a legal result, plaintiff has
10 suffered and suffers violations of his civil rights to full and equal enjoyment of goods,
11 services, facilities and privileges, and has suffered and will suffer embarrassment and
humiliation.

12

13 FACTUAL ALLEGATIONS

- 14
- 15 6. Plaintiff is, and at all times relevant to this complaint is, a "physically handicapped person," a
16 "physically disabled person," and a "person with a disability" as those terms are used under
applicable California law and under applicable federal law, including, but not limited to, Title
17 III of the Americans with Disabilities Act of 1990. (The terms "physically handicapped
18 person," a "physically disabled person," and a "person with a disability" will be used
interchangeably throughout this complaint.) Plaintiff is severely limited in the use of his legs.
19
- 20 7. Defendants Ali Ahmed Alammari and Yahya Ahmed Alammari, at all times relevant herein,
21 were and are the owners, operators, lessors, and/or lessees, franchisors and/or franchisees, of
22 public facilities at the Business, known as Hand's Liquor, located at 662 23rd Street,
Richmond, California, subject to California state law requiring full and equal access to public
23 facilities pursuant to California Health and Safety Code §19953 et seq., California Civil Code
24 §§ 51, 51.5, 52(a), 52.1, 54, 54.1, and 54.3, and subject to Title III of the Americans with
25 Disabilities Act of 1990, and to all the other legal requirements referred to in this complaint.
26 Plaintiff does not know the relative responsibilities of the defendants in the operation of the
27 Business facilities complained of herein, and alleges a joint venture and common enterprise by
28 all such defendants.

- 1 8. Defendants Ali Ahmed Alammari and Yahya Ahmed Alammari at all times relevant herein
2 were and are the owners, operators, possessors, builders and keepers of the Business called
3 Hand's Liquor in the city of Richmond, California. Plaintiff is informed and believes that each
4 of the defendants herein is the agent, employee, or representative of each of the other
5 defendants, and performed acts and omissions as stated herein within the scope of such agency
6 or employment or representative capacity and is responsible in some manner for the acts and
7 omissions of the other defendants in legally causing the damages complained of herein, and
8 have approved or ratified each of the acts or omissions of each other defendant, as herein
described.
- 9 9. Plaintiff does not know the true names and capacities of defendants Does 1 to 50, their
10 business capacities, their ownership connection to the property and the business, nor their
11 relative responsibilities or relationships among one another in causing the access violations
12 herein complained of, and alleges a joint venture and common enterprise among all
13 defendants. Plaintiff is informed and believes that each of the defendants herein is the agent,
14 ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee,
15 joint venturer, partner, and associate, or such similar capacity, of each of the other defendants,
16 and was at all times acting and performing, or failing to act or perform, with the authorization,
17 consent, permission or ratification of each of the other defendants, and is responsible in some
18 manner for the acts and omissions of the other defendants in legally causing the violations and
19 damages complained of herein, and have approved or ratified each of the acts or omissions of
20 each other defendant, as herein described. Plaintiff will seek leave to amend this Complaint
21 when the true names, capacities, connections and responsibilities of defendants are
ascertained.
- 22 10. Plaintiff is informed and believes that all named defendants, conspired to commit the acts
23 described herein, or alternatively aided and abetted one another in the performance of the
24 wrongful acts hereinafter complained of.
- 25 11. Defendant is the owners of the property and operators of the Business called Hand's Liquor
26 located in the city of Richmond, California. This business, including, but not limited to, access
27 aisles and access routes, is or forms a part of a "public accommodation or facility" subject to
the requirements of *California Health & Safety Code §19953*, et seq., and of *California Civil
Code §§51, 52(a), 54, 54.1*, et seq. On information and belief, this business, or portions of it,

1 was constructed or altered after 1990, and after January 26, 1993, which fact has subjected the
2 business to handicapped access requirements per California Code of Regulations Title 24 (the
3 State Building Code).

- 4 12. On or about April 13, 2019, May 24, 2019, and July 24, 2019 (the "Visit Dates"), Plaintiff
5 visited the Business for the purpose of buying food and drink. Defendants interfered with
6 Plaintiff's access to the Business as set forth herein. Plaintiff mentioned to the employees that
7 barriers existed, and so he had a reasonable expectation that barriers would be removed, but
8 this had not happened by his third visit. Plaintiff was deterred from visiting a fourth time on
9 September 15, 2019, due to these barriers that he reasonably believed had not been removed,
10 based on his prior experiences, and therefore he claims damages for being deterred from
11 visiting on that date.
- 12 13. Said acts and omissions denied Plaintiff legal handicapped access to the Business and its
13 facilities as required under state and federal law.
- 14 14. Plaintiff's home in San Pablo, California is approximately four miles from the Business
15 located in the city of Richmond. Plaintiff travels regularly to and through said city on business
16 and pleasure trips. Plaintiff plans to return to the Business when this public accommodation is
17 made accessible. This business is on a major thoroughfare and shopping corridor.
- 18 15. Plaintiff himself encountered the architectural barriers described herein, and/or is informed
19 and believes that the architectural barriers described herein violate the California Code of
20 Regulations and the Americans with Disabilities Act Guidelines for Buildings and Facilities
21 ("ADAAG") issued by the Department of Justice, and that they existed and continue to exist,
22 and thereby deny Plaintiff and others similarly situated full and equal access to the Business
23 facilities as set forth herein.
- 24 16. Defendants, and each of them, by these barriers, discriminated against Plaintiff, on the basis of
25 his physical disability, and interfered with his access to the Business and its facilities, in
26 violation of California law, including but not limited to §§51, 51.5, 54, 54.1, and in violation
27 of Title III, §302, the "Prohibition against Discrimination" provision, and §503, the
28 "Prohibition against Retaliation and Coercion" provision of the Americans with Disabilities
Act of 1990.
- 17 18. As a result of the actions and failure to act of defendants, and each of them, and as a result of
19 the failure to provide proper and accessible entryways, and accessible accommodations for a

1 store, Plaintiff suffered and will suffer the loss of his civil rights to full and equal access to
2 public facilities, and further has suffered in the past and will suffer in the future emotional
3 distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation,
4 embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated
5 with a person with a disability being denied access to a public accommodation, all to his
6 damages as prayed hereinafter in an amount within the jurisdiction of this court.

7

8 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH
9 DISABILITIES ACT OF 1990 (42 USC 12101 et seq.)

10 18. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the
11 allegations contained in paragraphs 1 to 17 above and incorporates them herein as if separately
12 pled.

13 19. Pursuant to law, in 1990 the United States congress made findings per 42 USC 12101
14 regarding persons with physical disabilities, finding that laws were needed to more fully
15 protect [at that time] 43 million Americans with one or more physical or mental disabilities;
16 [that] historically society has tended to isolate and segregate individuals with disabilities;
17 [that] such forms of discrimination against individuals with disabilities continue to be a serious
18 and pervasive social problem; [that] the nation's proper goals regarding individuals with
19 disabilities are to assure equality of opportunity, full participation, independent living and
20 economic self-sufficiency such individuals; [and that] the continuing existence of unfair and
21 unnecessary discrimination and prejudice denies people with disabilities the opportunity to
22 compete on an equal basis and to pursue those opportunities for which our free society is
justifiably famous.

23 20. Congress stated as its purpose in passing the Americans With Disabilities Act of 1990 (42
24 USC 12102):

- 25 a. It is the purpose of this act (1) to provide a clear and comprehensive national mandate
26 for the elimination of discrimination against individuals with disabilities; (2) to provide
27 clear, strong, consistent, enforceable standards; (3) to ensure that the Federal
28 Government plays a central role in enforcing the standards established in this Act on
behalf of individuals with disabilities; (4) to invoke the sweep of Congressional

1 authority, including the power to enforce the 14th amendment and to regulate
2 commerce, in order to address the major areas of discrimination faced day to day by
3 people with disabilities.

4 21. As part of the Americans with Disabilities Act of 1990, Congress approved Title III – Public
5 Accommodations and Services Operated by Private Entities (42 USC 12181, et seq.) Among
6 the public accommodations identified under this title were “... a bakery, grocery store,
7 clothing store, hardware store, shopping center, or other sales or rental establishment.”

8 22. Pursuant to 42 USC 12182,

9 a. “No individual shall be discriminated against on the basis of disability in the full and
10 equal enjoyment of the goods, services, facilities, privileges, advantages or
11 accommodations by any person who owns, leases, (or leases to), or operates a place of
public accommodation.”

12 23. Among the general prohibitions against discrimination were included in 42 USC

13 12182(b)(1)(A)(i):

14 a. Denial of Participation. It shall be discriminatory to subject an individual on the basis
15 of a disability or disabilities of such individual or class, directly, or through
16 contractual, licensing, or other arrangements, to a denial of the opportunity of the
17 individual or class to participate in or benefit from the goods, services, facilities,
privileges, advantages, or accommodations of an entity.

18 24. Among the general prohibitions against discrimination were included in 42 USC

19 12182(b)(1)(E):

20 a. Association. It shall be discriminatory to exclude or otherwise deny equal goods,
21 services, facilities, privileges, advantages, accommodations, or other opportunities to
22 an individual or entity because of the known disability of an individual with whom the
23 individual or entity is known to have a relationship or association.

24 25. The acts of Defendants set forth herein were a violation of Plaintiff’s rights under the ADA,
and the regulations promulgated thereunder, 28 Code of Federal Regulations Part 36 et seq.

26 27. Among the general prohibits against discrimination were included in 42 USC

28 12182(b)(2)(A)(i) and (ii):

a. Discrimination. For purposes of subsection (a), discrimination includes:

- 1 i. the imposition or application of eligibility criteria that screen out or tend to
2 screen out an individual with a disability or any class of individuals with
3 disabilities from fully and equally enjoying any goods, services, facilities,
4 privileges, advantages, or accommodations, unless such criteria can be shown
5 to be necessary for the provision of the goods, services, facilities, privileges,
6 advantages, or accommodations being offered;
- 7 ii. a failure to make reasonable modifications in policies, practices, or procedures,
8 when such modifications are necessary to afford such goods, services, facilities,
9 privileges, advantages, or accommodations to individuals with disabilities,
10 unless the entity can demonstrate that making such modifications would
11 fundamentally alter the nature of such goods, services, facilities, privileges,
12 advantages, or accommodations.

13 27. Plaintiff alleges that the facilities, policies, practices and procedure for entry to the Business
14 facility by persons with disabilities and their companions as established and set up by the
15 Defendants can be simply modified to eliminate disparate and discriminatory treatment of
16 persons with disabilities by properly constructing barrier-free handicapped access so as to
17 provide safe, full and equal enjoyment of the Business facilities as is enjoyed by other, non-
18 disabled, people.

19 28. The specific prohibition against retaliation and coercion is included in the Americans with
20 Disabilities Act of 1990 §503(b) and the Remedies and Procedures in §503(c):

- 21 a. Section 503(b) Interference, Coercion, or Intimidation. - It shall be unlawful to coerce,
22 intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or
23 on account of his or her having exercised or enjoyed, or on account of his or her having
24 aided or encouraged any other individual in the exercise or enjoyment of, any right
25 granted or protected by this Act.
- 26 b. Section 503(c) Remedies and Procedure. - The remedies and procedures available
27 under sections 107, 203, and 308 of this Act shall be available to aggrieved persons for
28 violations of subsections (a) and (b), with respect to Title I, Title II and Title III,
 respectively.

- 1 29. Among the specific prohibitions against discrimination were included, in 42 USC
2 §12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications barriers
3 that are structural in nature, in existing facilities ... where such removal is 3dily achievable and
4 (v) "where and entity can demonstrate that the removal of a barrier under clause (iv) is not
5 readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or
6 accommodations available through such methods are readily achievable." The acts of
7 Defendants set forth herein violated Plaintiffs rights under the "ADA," 42 USC 12181 et seq.,
8 and the regulations promulgated thereunder, 28 CFA Part 36, et seq.
- 9 30. The removal of the barriers complained of by Plaintiff as hereinabove alleged were at all times
10 after 1990 "readily achievable." On information and belief, if the removal of all the barriers
11 complained of here together were not removable, the removal of each individual barrier
12 complained of herein was "readily achievable."
- 13 31. Per 42 USC §12181(9), "The term 'readily-achievable' means easily accomplishable and able
14 to be carried out. The statute and attendant regulations define relative 'expense' in relation to
15 the total financial resources of the entities involved, including any 'parent' companies.
16 Plaintiff alleges that properly repairing each of the items that Plaintiff complains of herein is
17 readily achievable, including, but not limited to, correcting and repairing the items set forth in
18 the Paragraphs above. The changes needed to remove barriers to access for the disabled were
19 and are readily achievable by the defendants under standards set forth under 42 USC §I2181 of
20 the Americans with Disabilities Act of 1990. (Further, if it were not "readily achievable" for
21 defendants to remove all such barriers, defendants have failed to make the required services
22 available through alternative methods, although such methods are achievable as required by 42
23 USC §12181(b)(2)(a)(iv)(, v).)
- 24 32. Pursuant to the Americans with Disabilities Act of 1990, §308 (42 USC §12188 et seq.),
25 Plaintiff is entitled to the remedies and procedures set forth in the Civil Rights Act of 1964
26 §204(a), (42 USC §2000a-3(a)), as Plaintiff is being subjected to discrimination on the basis of
27 disability in violation of this title andor Plaintiff has reasonable grounds for believing that he
28 is about to be subjected to discrimination in violation of the Americans with Disabilities Act of

1 1990, §302. Plaintiff cannot return to or make use of the subject Business' public facilities
2 complained of herein for the purpose of entry and provision of goods and service so long as
3 Defendants continue to apply eligibility criteria, policies, practices that screen out and refuse
4 to allow entry and service to persons with disabilities such as Plaintiff's.

5 **33.** Each of Defendants' acts and omissions of failing to provide barrier-free handicapped access
6 for Plaintiff, were tantamount to interference, intimidation, and coercion pursuant to the
7 Americans with Disabilities Act of 1990 §503(b) (now 42 USC §12203): "It shall be unlawful
8 to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of,
9 or on account of his or her having aided or encouraged any other individual in the exercise or
10 enjoyment of, any right granted or protected by this Act."

11 34. Pursuant to the Americans with Disabilities Act of 1990 §308(a)(1) (now 42 USC §12188),
12 "Nothing in this section shall require a person with a disability to engage in a futile gesture if
13 such person has actual notice that a person or organization covered by this title does not intend
14 to comply with its provisions." Pursuant to this last section, Plaintiff, on information and
15 belief, alleges that defendants have continued to violate the law and deny the rights of Plaintiff
16 and other disabled persons to access this public accommodation for the purpose of dining.
17 Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2) "...Where appropriate,
18 injunctive relief shall also include requiring the provision of an auxiliary aid or service,
19 modifications of a policy, or provision of alternative methods, to the extent required by this
20 title."

21 35. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964
22 (42 USC §2000a-3(a)), and pursuant to federal regulations adopted to implement the
23 Americans with Disabilities Act of 1990, including, but not limited to, an order granting
24 injunctive relief and attorneys' fees. Such attorneys' fees, "including litigation expenses and
25 costs," are further specifically provided for by §505 of Title III.

26 WHEREFORE, Plaintiff prays for damages as hereinafter stated.
27
28

1 II.SECOND CAUSE OF ACTION: BREACH OF STATUTORY PROTECTIONS FOR
2 PERSONS WITH PHYSICAL DISABILITIES (California Health and Safety Code
3 §19955 et seq.)

- 4
- 5 36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the
6 allegations contained in paragraphs 1 to 35 above and incorporates them herein as if separately
7 pled.
- 8 37. California Health & Safety Code §19955 provides in pertinent part: "The purpose of this part
9 is to insure that public accommodations or facilities constructed in this state with private funds
10 adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of
11 the Government Code. For the purposes of this part "public accommodation or facilities"
12 means a building, structure, facility, complex, or improved area which is used by the general
13 public, and shall include auditoriums, hospitals, theaters, hotels, motels, stadiums, and
14 convention centers. When sanitary facilities are made available for the public, clients or
15 employees in such accommodations or facilities, they shall be made available for the
16 handicapped.
- 17 38. California Health & Safety Code §19956, which appears in the same chapter as §19955,
18 provides in pertinent part, "accommodations constructed in this state shall conform to the
19 provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the
20 Government Code.. ." California Health and Safety Code §19956 was operative July 1, 1970,
21 and is applicable to all public accommodations constructed or altered after that date. On
22 information and belief, portions of the subject Business building and facilities were
23 constructed and/or altered after July 1, 1970, and substantial portions of said building and
24 facilities had alterations, structural repairs, and/or additions made to such public
25 accommodation after July 1, 1970, thereby requiring said public accommodations and/or
26 buildings to be subject to the requirements of Part 5.5, California Health Safety Code §19955,
27 et seq., upon such alteration, structural repairs or additions per California Health and Safety
28 Code §19955.

1 39. Pursuant to authority delegated by the California Government Code, the State Architect
2 promulgated regulations for the enforcement of these Code provisions. Effective January 1,
3 1988, Title 24 of the California Administrative Code adopted the California State Architect's
4 Regulations, and these regulations must be complied with as to any alterations and/or
5 modifications of the Business' facilities after that date. Construction changes occurring prior
6 to this date but after July 1, 1970, triggered access requirements pursuant to the "ASA"
7 requirements, the American Standards Association Specifications, A117.1 -1961. On
8 information and belief, at the time of the construction modification and of the Business'
9 building and facilities, all buildings and facilities covered were required to conform to each of
10 the standards and specifications described in the American Standards Association
11 Specifications and/or those contained in Title 24 of the California Administrative Code (now
12 known as Title 24, California Code of Regulations.)

13 40. Public facilities such as the subject Business are public accommodations or facilities within
14 the meaning of California Health and Safety Code §19955.

15 41. It is difficult or impossible for persons with physical disabilities who use wheelchairs, canes,
16 walkers and service animals to travel about in public to use a store with the defects set forth
17 above as required by Title 24 of the California Code of Regulations and the Americans with
18 Disabilities Act Access Guidelines (ADAAG). Thus, when public accommodations fail to
19 provide handicap accessible public facilities, persons with disabilities are unable to enter and
20 use said facilities, and are denied full and equal access to and use of that facility that is
21 enjoyed by other members of the general public.

22 42. Plaintiff, and other similarly situated persons with physical disabilities whose physical
23 conditions require the use of wheelchairs, canes, walkers and service animals, are unable to
24 use public facilities on a "full and equal" basis unless each such facility is in compliance with
25 the provisions of the California Health & Safety Code §19955, et seq. Plaintiff is a member of
26 that portion of the public whose rights are protected by the provisions of California Health &
27 Safety Code §19955, et seq.

- 1 43. The California Health and Safety Code was enacted to “ensure that public accommodations
2 and facilities constructed in this state with private funds adhere to the provisions of Chapter 7
3 (commencing with §4450) of Division 5 of Title 1 of the Government Code.” Such “public
4 accommodations” are defined to include stores like this one.
- 5 44. Plaintiff is further informed and believes that as of the date of filing this complaint,
6 Defendants have not made accessible the facilities at the Business as set forth above.
- 7 45. Plaintiff, is informed and believes, and therefore alleges, that Defendants, and each of them,
8 caused the subject buildings and facilities constituting the Business to be constructed, altered
9 and maintained in such a manner that persons with physical disabilities were denied full and
10 equal access to, within and throughout said buildings and were denied full and equal use of
11 said public facilities, and despite knowledge and actual and constructive notice to such
12 Defendants that the configuration of the store, and/or buildings was in violation of the civil
13 rights of persons with physical disabilities, such as Plaintiff. Such construction, modification,
14 ownership, operation, maintenance and practices of such public facilities are in violation of
15 law as stated in Part 5.5, California Health & Safety Code §19955, et seq., and elsewhere in
16 the laws of California.
- 17 46. On information and belief, the subject building constituting the public facilities of the Business
18 have denied full and equal access to Plaintiff and other persons with physical disabilities in
19 other respects due to non-compliance with requirements of Title 24 of the California Code of
20 Regulations and the California Health & Safety Code §19955, el seq.
- 21 47. The basis of Plaintiff's aforementioned information and belief is the various means upon which
22 Defendants must have acquired such knowledge, including, but not limited to, this lawsuit,
23 other access lawsuits, communications with operators of other stores, and other property
24 owners regarding denial access, communications with Plaintiff and other persons with
25 disabilities, communications with other patrons who regularly visit there, communications
26 with owners of other businesses, notices and advisories they obtained from governmental
27 agencies through the mails, at seminars, posted bulletins, television, radio, public service
28 announcements, or upon modification, improvement, alteration or substantial repair of the

1 subject premises and other properties owned by these Defendants, newspaper articles and trade
2 publications regarding the Americans with Disabilities Act of 1990, and other access law, and
3 other similar information. The scope and means of the knowledge of each defendant is within
4 each defendant's exclusive control and cannot be ascertained except through discovery.

5 48. As a result of Defendants' acts and omissions in this regard, Plaintiff has been required to incur
6 legal expenses and hire attorneys in order to enforce his civil rights and enforce provisions of
7 the law protecting access for persons with physical disabilities and prohibiting discrimination
8 against persons with physical disabilities, and to take such action both in his own interests and
9 in order to enforce an important right affecting the public interest. Plaintiff, therefore, seeks
10 damages in this lawsuit for recovery of all reasonable attorneys' fees incurred, pursuant to the
11 provisions of the California Code of Civil Procedure §1021.5. Plaintiff additionally seeks
12 attorneys' fees pursuant to California Health & Safety Code §I9953 and California Civil Code
13 §§54.3.

14 49. Defendants, and each of them, at times prior to and including the Visit Dates, and continuing
15 to the present time, knew that persons with physical disabilities were denied their rights of
16 equal access to all portions of this public facility. Despite such knowledge, Defendants failed
17 and refused to take steps to comply with the applicable handicapped access statutes; and
18 despite knowledge of the resulting problems and denial of civil rights thereby suffered by
19 Plaintiff and other similarly situated persons with disabilities, including the specific notices
20 referred to in this Complaint. Defendants have failed and continue to fail to take action to
21 grant full and equal access to persons with physical disabilities in the respects complained of
22 hereinabove. Defendants and each of them have carried out a course of conduct of refusing to
23 respond to, or correct complaints about, denial of handicap access.

24 50. Defendants' actions have also been oppressive to persons with physical disabilities and to other
25 members of the public, and have evidenced actual or implied malicious intent towards those
26 members of the public, such as Plaintiff and other persons with physical disabilities who have
27 been denied the proper access they are entitled to by law. Further, Defendants' refusals on a
28

1 day-to-day basis to correct these problems evidences despicable conduct in conscious
2 disregard for the rights of Plaintiff and other members of the public with physical disabilities.

3 51. Plaintiff prays for an award of statutory damages against Defendants, and each of them,
4 pursuant to California Civil Code §54.3.

5 52. As a result of the actions and failure of Defendants, and each of them, and as a result of the
6 failure to provide proper accessible public facilities, Plaintiff was denied his civil rights,
7 including his right to full and equal access to public facilities, was embarrassed and
8 humiliated, suffered psychological and mental injuries and emotional distress, mental distress,
9 mental suffering, mental anguish, which includes shame, humiliation, embarrassment, anger,
10 chagrin, disappointment and worry, naturally associated with a person with a physical
11 disability being denied access to a public accommodation.

12 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

13
14 III. THIRD CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S CIVIL RIGHTS
15 ACTS (California Civil Code §§54, 54.1 and 54.3)

16
17 53. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the
18 allegations contained in paragraphs 1 to 52 above and incorporates them herein as if separately
19 pled.

20 54. The public facilities above-described constitute public facilities and public accommodations
21 within the meaning of California Health and Safety Code §19955 et seq. and are facilities to
22 which members of the public are invited. The aforementioned acts and omissions of
23 defendants, and each of them, constitute a denial of equal access to and use and enjoyment of
24 these facilities by persons with disabilities, including Plaintiff. Said acts and omissions are
25 also in violation of the provisions of Title 24 of the California Code of Regulations.

26 55. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access, and the denial by
27 defendants of such rights and entitlements are set forth in California Civil Code §§54, 54.1 and
28 54.3, to wit:

- 1 a. Individuals with disabilities shall have the same right as the ...general public to full and
2 free use of the streets, highways, sidewalks, walkways, public buildings, public
3 facilities, and other public places. (California Civil Code §54(a).)
- 4 b. Individuals with disabilities shall be entitled to full and equal access, as other members
5 of the general public, to accommodations, advantages, facilities, and privileges of all
6 common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars,
7 boats, or any other public conveyances or modes of transportation (whether private,
8 public, franchised, licensed, contracted, or otherwise provided), telephone facilities,
9 adoption agencies, private schools, hotels, lodging places, places of public
10 accommodation, amusement or resort, and other places to which the general public is
11 invited, subject only to the conditions and limitations established by law, or state or
12 federal regulation, and applicable alike to all persons. (California Civil Code §54.1(a).)

13 56. On or about the Visit Dates, Plaintiff suffered violations of California Civil Code §§54 and
14 54.1 in that he was denied full and equal enjoyment of the goods, services, facilities and
15 privileges of the Business as set forth in herein above. Plaintiff was also denied full and equal
16 access to other particulars, including, but not limited to, those described herein above. Plaintiff
17 was also denied use of facilities that he was entitled to under Title III of the Americans with
18 Disabilities Act of 1990.

19 57. As a result of the denial of full and equal enjoyment of the goods, services, facilities and
20 privileges of Defendants' Business due to the acts and omissions of Defendants, and each of
21 them, in owning, operating and maintaining this subject Business as a public facility, Plaintiff
22 has suffered a violation of his civil rights, including, but not limited to, rights under California
23 Civil Code §§54, 54.1, and 54.3, and has suffered and will suffer an injury-in-fact in the form
24 of emotional distress, mental distress, mental suffering, mental anguish, which includes shame,
25 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and
26 naturally associated with a disabled person's denial of full and equal enjoyment of goods,
27 services, and privileges, all to his damages as prayed hereinafter in an amount within the

1 jurisdiction of this court. Defendants' actions and omissions to act constituted discrimination
2 against Plaintiff on the sole basis that Plaintiff is disabled.

3 58. Plaintiff seeks statutory damages for the violation of his rights as a disabled person that
4 occurred on or about the Visit Dates, according to proof, pursuant to California Civil Code
5 §54.3.

6 59. As a result of Defendants' acts and omissions in this regard, Plaintiff has been required to incur
7 legal expenses and hire attorneys in order to enforce his rights and enforce provisions of the
8 law protecting the full and equal enjoyment of goods, services, facilities, privileges of public
9 facilities by the disabled, and those individuals associated with or accompanied by a person
10 with disabilities, and prohibiting discrimination against the disabled. Plaintiff, therefore, seeks
11 recovery in this lawsuit for all reasonable attorneys' fees incurred pursuant to the provisions of
12 California Civil Code §51, 52, and 54. (California Civil Code §55 is specifically not invoked.)
13 Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for damages to
14 Plaintiff, but also to compel the Defendants to make their goods, services, facilities and
15 privileges available and accessible to all members of the public with physical disabilities,
16 justifying public interest attorneys' fees pursuant to the provisions of California Code of Civil
17 Procedure §1021.5.

18 60. The acts and omissions of Defendants in failing to provide the required accessible facilities
19 subsequent to the enactment date and compliance date of the Americans with Disabilities Act
20 of 1990 and refusal to make remedial alterations to their facilities and other elements as
21 hereinabove stated, after being notified by patrons before and after the time of Plaintiff's visit
22 and injuries, on or about the Visit Dates, and all times prior thereto, with the knowledge that
23 persons with disabilities would enter Defendants' premises, the reason given therefor, was an
24 established policy, practice, and procedure of refusing and denying entry and/or use of
25 facilities, thereby denying services to a person with disabilities and the companions thereor,
26 evidence malice and oppression toward Plaintiff and other disabled persons.

27 61. Plaintiff seeks injunctive relief pursuant to California Civil Code §54 and Health and Safety
28 Code §19953 et seq. to require Defendants to comply with federal and state access regulations.

- 1 62. Defendants have failed to establish a non-discriminatory criteria, policy, practice and
2 procedure for entry into said Business as hereinabove described.
- 3 63. As a result of defendants' continuing failure to provide for the full and equal enjoyment of
4 goods, services, facilities and privileges of said Business as hereinabove described, Plaintiff
5 has continually been denied his full and equal enjoyment of the subject store facilities at the
6 Business, as it would be a "futile gesture to attempt to patronize" said Business with the
7 discriminatory policy in place as hereinabove described.
- 8 64. The acts and omissions of Defendants as complained of herein in failing to provide the
9 required accessible facilities subsequent to the enactment date and compliance date of the
10 Americans with Disabilities Act of 1990 and refusal to make remedial modifications and
11 alterations to the architectural barriers as stated herein and in failing to establish practices,
12 policies and procedures to allow safe access by persons who are disabled are continuing on a
13 day-to-day basis to have the effect of wrongfully and willfully excluding Plaintiff and other
14 members of the public who are disabled from full and equal enjoyment of the subject Business
15 as hereinabove described. Such acts and omissions are the continuing cause of humiliation and
16 mental and emotional suffering of Plaintiff in that these actions continue to treat Plaintiff as an
17 inferior and second class citizen and serve to discriminate against him on the sole basis that he
18 is disabled. Plaintiff is unable so long as such acts and omissions of defendants continue, to
19 achieve full and equal enjoyment of the goods and services of said Business as described
20 hereinabove. The acts of Defendants have legally caused and will continue to cause irreparable
21 injury to Plaintiff if not enjoined by this court.
- 22 65. Wherefore, Plaintiff asks this court to preliminarily and permanently any continuing refusal by
23 Defendants to permit entry to said Business and to serve Plaintiff or others similarly situated,
24 and to require Defendants to comply forthwith with the applicable statutory requirements
25 relating to the full and equal enjoyment of goods and services as described hereinabove for
26 disabled persons. Plaintiff further requests that the court award statutory costs and attorneys'
27 fees to Plaintiff pursuant to California Code of Civil Procedure §1021.5, all as hereinafter
28 prayed for.

1
2 WHEREFORE, Plaintiff prays for statutory damages, reasonable attorneys' fees and costs of suit, as
3 allowed by statute and according to proof.
4

5 IV. FOURTH CAUSE OF ACTION: VIOLATION OF CALIFORNIA UNRUH CIVIL
6 RIGHTS ACT (California Civil Code §51 and §51.5.)
7

8 66. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the
9 allegations contained in paragraphs 1 to 65 above and incorporates them herein as if separately
10 pled.

11 67. Defendant' acts and omissions as specified with regard to the discriminatory treatment of
12 Plaintiff, on the basis of his disabilities, have been in violation of California Civil Code §§51
13 and 51.5, the Unruh Civil Rights Act, and have denied to Plaintiff his rights to "full and equal
14 accommodations, advantages, facilities, privileges or services in all business establishments of
15 every kind whatsoever."

16 68. California Civil Code §51 also provides that "[a] violation of the right of any individual under
17 the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a
18 violation of this section."

19 69. California Civil Code §51.5 also provides that "[no business establishment of any kind
20 whatsoever shall discriminate against, boycott, or blacklist, refuse to buy from, sell to, or trade
21 with any person in this state because of the race, creed, religion, color, national origin, sex,
22 disability of the person or of the person's partners, members, stockholders, directors, officers,
23 managers, superintendents, agents, employees, business associates, suppliers, or customers."

24 70. As a result of the violation of Plaintiffs civil rights protected by California Civil Code §§51
25 and 51.5, Plaintiff is entitled to the rights and remedies of California Civil Code §52, to wit,
26 statutory damages, as well as reasonable attorneys' fees and costs, as allowed by statute,
27 according to proof. California Civil Code §55 is specifically not invoked by plaintiff.
28

71. Pursuant to California Code of Civil Procedure §425.50: (a) this complaint is filed on behalf of a high-frequency litigant, as defined; (b) 26; (c) shopping in the Richmond area; (d) to buy food and drink from this liquor and food store.

72. WHEREFORE, Plaintiff prays that this court award damages and provide relief as follows:

PRAYER FOR RELIEF

Plaintiff prays that this court award statutory damages and provide relief as follows:

1. Grant injunctive relief requiring that Defendants establish a nondiscriminatory criteria policy, practice and procedure permitting entry into the subject Business in the City of Richmond, California, for the purpose of obtaining the goods and services accorded herein according to California Civil Code §§51, 51.5, 52, 54, 54.1, and 54.3, California Health and Safety Code §19953 et seq., and Title III of the Americans with Disabilities Act of 1990, and grant injunctive relief requiring that Defendants repair and render safe to disabled persons, and otherwise make accessible, all public areas of the Business' store, including, but not limited to, each of the barriers to access identified above, and make such facilities "readily accessible to and usable" by individuals with disabilities according to the standards of Title 24 of the California Administrative Code, California Health & Safety Code §19955 et seq., and Title III of the Americans with Disabilities Act of 1990 and the standards of ADAAG; and prohibiting operation of the Business located in the City of Richmond, California, as a public facility until Defendants provide full and equal enjoyment of goods and services as described hereinabove to disabled persons, including Plaintiff.

5. Award Plaintiff all litigation expenses, all costs of this proceeding and a reasonable attorneys' fees as provided by law, including, but not limited to, those recoverable pursuant to the provisions of California Civil Code §§52 and 54.3, California Code of Civil Procedure §1021.5, and Americans with Disabilities Act of 1990 5308 of Title III; and
6. Grant such other and further relief as the court may deem just and proper.

/s/ Richard A. Mac Bride

Richard A. Mac Bride, Attorney for Plaintiff

Date: October 22, 2019

REQUEST FOR JURY TRIAL

Plaintiff hereby requests a jury for all claims for which a jury is permitted.

/s/ Richard A. Mac Bride

Richard A. Mac Bride, Attorney for Plaintiff

Date: October 22, 2019

VERIFICATION

I, Jose Daniel Castillo-Antonio, plaintiff herein, hereby swear under penalty of perjury under the laws of the State of California as follows: I am familiar with the contents of this complaint and verify that the facts alleged are true and correct according to my personal knowledge, except as to those matters that are pled on information and belief, and as to those matters, I have reason to believe that they are true.

/s/ Jose Daniel Castillo-Antonio

Jose Daniel Castillo-Antonio

Date: October 22, 2019